

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RACE TIRES AMERICA, INC., a Division)
OF SPECIALTY TIRES OF AMERICA, INC.;)
SPECIALTY TIRES OF AMERICA, INC.;)
SPECIALTY TIRES OF AMERICA)
(PENNSYLVANIA), INC.; and SPECIALTY)
TIRES OF AMERICA (TENNESSEE), LLC,)

Plaintiffs,)

v.)

02: 07cv1294

HOOSIER RACING TIRE CORP., and)
DIRT MOTOR SPORTS, INC., d/b/a)
WORLD RACING GROUP,)

Defendants.)

MEMORANDUM ORDER

Presently pending before the Court is the EMERGENCY MOTION FOR RELIEF FROM THE COURT'S MEMORANDUM ORDER ENTERED MAY 2, 2008, with brief in support, filed by Defendant Dirt Motor Sports, Inc. d/b/a World Racing Group (Document Nos. 59 and 60), and the RESPONSE IN OPPOSITION by Plaintiffs (Document No. 63).

By Memorandum Order entered May 2, 2008, the Court ordered that Defendant Dirt Motor Sports, Inc. d/b/a World Racing Group ("WRG") produce non-privileged Electronically Stored Information ("ESI") responsive to Plaintiffs' First Request for Production of Documents on or before May 23, 2008.

On May 23, 2008, at 2:19 P.M., the last day of the Court-imposed deadline for production of the ESI, WRG filed the instant Emergency Motion in which it requests an extension until June 20, 2008, to complete production of the ESI. In the alternative, WRG represents that it "would allow plaintiffs' ESI consultant to perform the necessary searching and

production at plaintiffs' expense, subject to appropriate screening to prevent the production of privileged ESI and to protect 'confidential' or 'attorneys' eyes only' ESI in accordance with the protective order in this case." Brief, at 7 n.2.

It comes as no surprise that Plaintiffs strenuously object to any such extension. Plaintiffs did not respond to the proposal that Plaintiffs' ESI consultant could perform the necessary searching and production at their expense, subject to certain restrictions.

The deadline for producing the ESI has now passed and Plaintiffs have not received any of the ESI that has been requested. According to WRG it simply has not been able to meet the deadline, although the Court was not informed of this development until WRG filed the instant motion.¹

The Court reluctantly will grant, in part, the extension requested by WRG. Accordingly, WRG is permitted to produce non-privileged ESI responsive to Plaintiffs' First Request for Production of Documents and ESI on or before **June 13, 2008**. Furthermore, WRG is ordered that it should begin "a rolling production" of ESI forthwith.

It is worth noting that, should Plaintiffs so desire, this Order does not prevent Plaintiffs from having their own ESI consultant perform the necessary searching and production at their expense, subject to appropriate screening to prevent the production of privileged ESI and to protect confidential or attorneys' eyes only ESI in accordance with the protective order in this case.

¹ Actually, due to the Memorial Day holiday, the Court was not informed of the inability of WRG to comply with the Court's Order until Tuesday, May 27, 2008.

So **ORDERED** this 28th day of May, 2008.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

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